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UNF West, Inc. and International Brotherhood of Teamsters, Local 63. Case 21–CA–144972

June 15, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by International Brotherhood of Teamsters, Local 63 (the Union) on January 22, 2015, the General Counsel issued the complaint on February 10, 2015, alleging that UNF West, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to recognize and bargain and to furnish relevant and necessary information following the Union’s certification in Case 21–RC–103281. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations of the complaint, and asserting certain affirmative defenses.

On February 25, 2015, the General Counsel filed a Motion for Summary Judgment. On March 3, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish requested information, but contests the validity of the Union’s certification on the basis of its arguments, raised and rejected in the representation proceeding, that the certified bargaining unit is inappropriate, and that because the Board lacked a quorum, its appointment of the Regional Director for Region 21 is void and the Board cannot apply its decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 8–9 (2011), enfd. sub. nom. *Kindred Nursing Centers East v. NLRB*, 727 F.3d 552 (6th Cir. 2013).¹

¹ The Respondent’s arguments regarding the Board’s lack of a quorum were specifically rejected in the Board’s October 29, 2014 Order denying its request for review in Case 21–RC–103281.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union’s request for information. The complaint alleges, and the Respondent admits, that on about November 18, 2014, the Union requested in writing that the Respondent furnish it with the following information: the detailed SPD for medical, dental, vision and 401(k) plans; and an employee roster including name, date of hire, address, rate of pay and date of birth of all employees.² It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of the information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified. We find that the Respondent unlawfully refused to furnish the information sought by the Union.

Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a facility located at 22150 Goldencrest Drive, Moreno Valley, California, has been engaged in the distribution of natural, organic, and specialty foods.

During the 12-month period ending May 24, 2013, a representative period, the Respondent sold and shipped from its Moreno Valley, California facility goods valued in excess of \$50,000 directly to points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and

² The Union’s November 18, 2014 letter to the Respondent is attached to the General Counsel’s motion as Exh. G.

³ The Respondent’s request that the complaint be dismissed is therefore denied.

(7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a representation election held on July 19, 2013, the Union was certified on November 13, 2014, as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time truck drivers employed by Respondent at its facility located at 22150 Goldencrest Drive, Moreno Valley, CA; excluding all other employees, office clerical, professional employees, confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letters dated November 18, and December 8, 2014, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. By letter dated November 18, 2014, the Union also requested that the Respondent provide it with the information set forth above that is necessary for, and relevant to, the Union's performance of its duties as the collective-bargaining representative of the unit employees. Since about December 5, 2014, the Respondent has failed and refused to bargain collectively with the Union as the exclusive bargaining representative of the unit employees. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 5, 2014, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by failing and refusing to furnish the Union with the requested information described above, the Respondent has been engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also or-

der the Respondent to provide the Union with the information it requested on November 18, 2014.

To ensure that employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date that the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, UNF West, Inc., Moreno Valley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 63 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is necessary and relevant to its role as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers employed by Respondent at its facility located at 22150 Goldencrest Drive, Moreno Valley, CA; excluding all other employees, office clerical, professional employees, confidential employees, guards and supervisors as defined in the Act.

(b) Furnish the Union in a timely manner the information it requested on November 18, 2014.

(c) Within 14 days after service by the Region, post at its facility in Moreno Valley, California, copies of the attached notice marked "Appendix."⁴ Copies of the no-

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judge-

tice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 5, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 15, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Teamsters, Local 63 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time truck drivers employed by us at our facility located at 22150 Goldencrest Drive, Moreno Valley, CA; excluding all other employees, office clerical, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union in a timely manner with the information it requested on November 18, 2014.

UNF WEST, INC.

The Board's decision can be found at www.nlrb.gov/case/21-CA-144972 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

